



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

September 28, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment
DLCD File Number 003-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 13, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Kevin Harrison, Deschutes County

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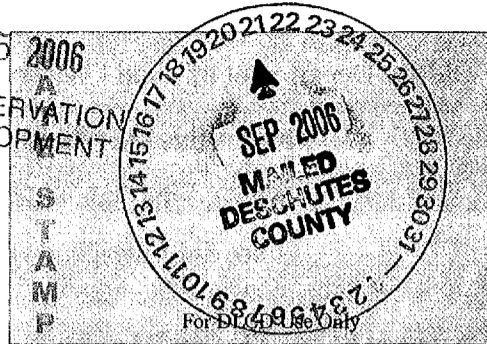
FORM

2 Notice of Adoption

DEPT OF

SEP 25 2006

LAND CONSERVATION AND DEVELOPMENT



THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

Jurisdiction: Deschutes County Local file number: PA-05-9 / ZC-05-4
Date of Adoption: 9/13/06 Date Mailed: 9/21/06
Date original Notice of Proposed Amendment was mailed to DLCD: 2/8/06

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amend comprehensive plan from Rural Residential Exception Area to Agriculture. Amend zone designation from RR-10 to EFU-TRB

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Same

Plan Map Changed from: Rural Residential Exception Area to: Agriculture
 Zone Map Changed from: RR-10 to: EFU-TRB
 Location: 18-13-7; tl. 900 and 18-13-8; tl. 700 Acres Involved: 160
 Specify Density: Previous: 1 d.u. / 10 acres New: 3 d.u. / 160 ac.
 Applicable Statewide Planning Goals: 1, 2, 3
 Was and Exception Adopted? YES NO

DLCD File No.: 003-06
(14999)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Kevin Harrison Phone: (541) 385-1401 Extension: _____
Address: 117 NW Lafayette City: Bend
Zip Code + 4: 97701 - Email Address: kevinh@deschutes.org

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

<p>REVIEWED</p> <p><i>[Signature]</i></p> <p>LEGAL COUNSEL</p>
<p>REVIEWED</p> <p><i>[Signature]</i></p> <p>CODE REVIEW COMMITTEE</p>

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 23, the Deschutes	*	
County Comprehensive Plan, To Change the Plan	*	ORDINANCE NO. 2006-027
Designation for Certain Property From Rural	*	
Residential Exception Area to Agricultural.	*	

WHEREAS, the Bend Metro Park and Recreation District has proposed to change the zoning designation of certain property from Rural Residential Exception Area to Agricultural; and

WHEREAS, the Board of County Commissioners (Board) after reviewing all the evidence presented at the public hearing, agrees with the findings of the Hearings Officer, and

WHEREAS, the Board, after review conducted in accordance with applicable law, approved the change in zoning designation from Rural Residential Exception area to Agricultural; and,

WHEREAS, Deschutes County Ordinance 2000-017 ordained the Plan Map to be a component of Title 23 and, therefore, any amendment to the Plan Map is an amendment to Title 23; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Title 23, The Deschutes County Comprehensive Plan Map is hereby amended to change the plan designation for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "B," and by this reference incorporated herein, from Rural Residential Exception Area to Agricultural.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached hereto as Exhibit "C," and by this reference incorporated herein.

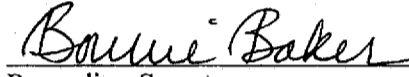
Dated this 13th of Sept., 2006

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


BEV CLARNO, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

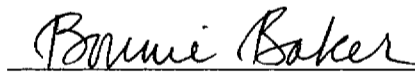
Date of 1st Reading: 28th day of August, 2006.

Date of 2nd Reading: 13th day of Sept., 2006.

Record of Adoption Vote				
Commissioner	Yes	No	Abstained	Excused
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bev Clarno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 12th day of Dec., 2006.

ATTEST:


Recording Secretary

Zone Change Parcel
From: RR-10 to EFU

PROPERTY DESCRIPTION

Section 7: The Northeast One-Quarter of the Southeast One-Quarter (NE1/4 SE1/4)

Section 8: The Northwest One-Quarter of the Southwest One-Quarter (NW1/4 SW1/4)

Section 18: The Northeast One-Quarter of the Southwest One-Quarter (NE1/4 SW1/4)
The Northwest One-Quarter of the Southeast One-Quarter (NW1/4 SE1/4)

All located in Township 18 South, Range 13 East, Willamette Meridian, Deschutes County,
Oregon

See drawing attached hereto and hereby incorporated by reference.

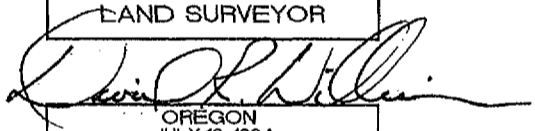

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686
RENEWAL DATE: 06/30/08 8/22/06

Exhibit A
Page 1 of 2
Ordinance 2006-027

ZONE CHANGE EXCHANGE AREAS

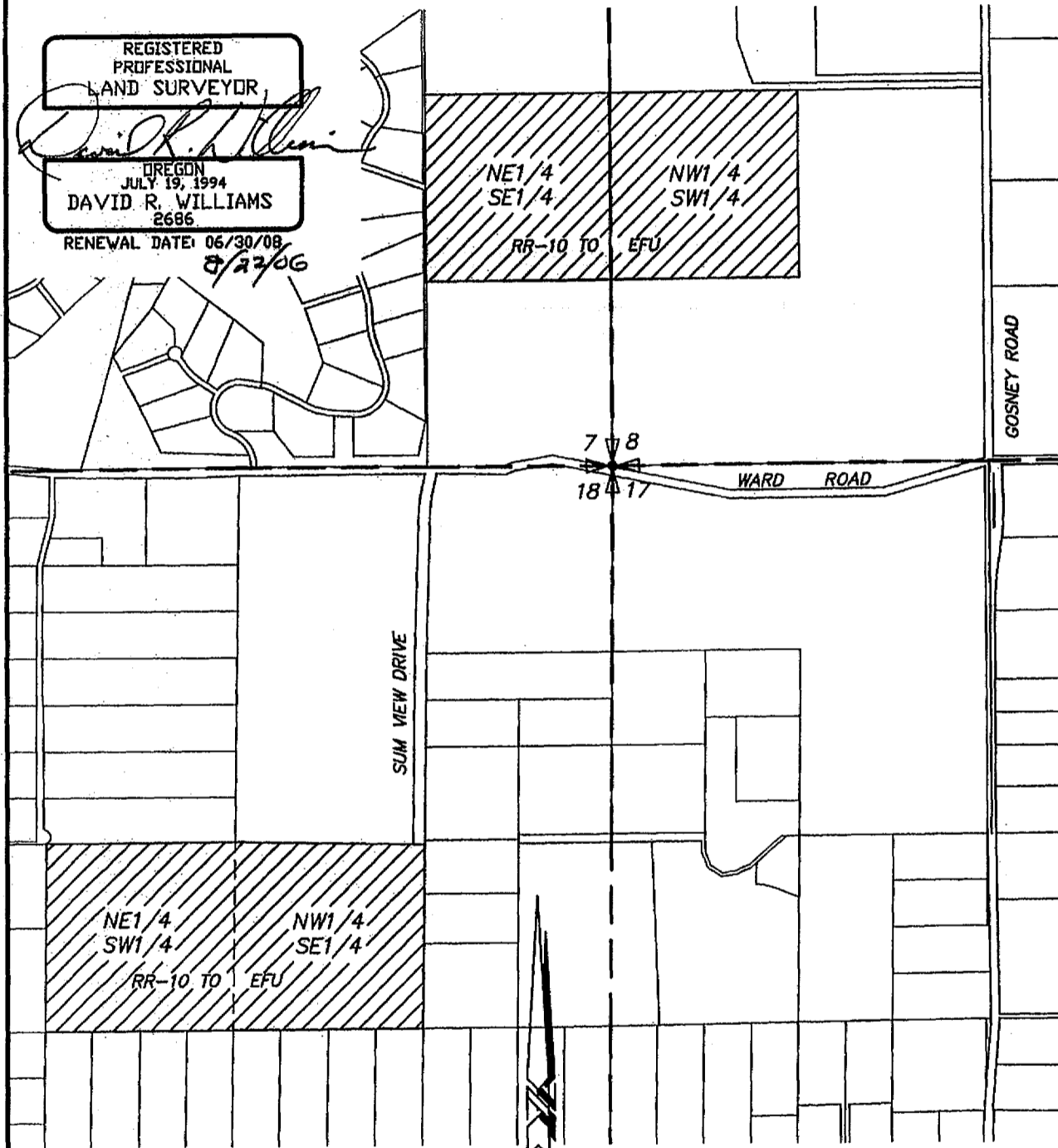
LOCATED IN: SECTIONS 7, 8, 17 & 18, T18S, R13E, W.M.,
DESCHUTES COUNTY, OREGON

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686

RENEWAL DATE: 06/30/08
8/22/06



1" = 1000'

060202ZSWAP

HWA SURVEYORS, ENGINEERS
& PLANNERS

HICKMAN, WILLIAMS & ASSOCIATES, INC
805 SW INDUSTRIAL WAY, SUITE 10, BEND, OREGON 97702
PHONE: (541) 338-5371 FAX: (541) 338-5418

RR-10 TO EFU

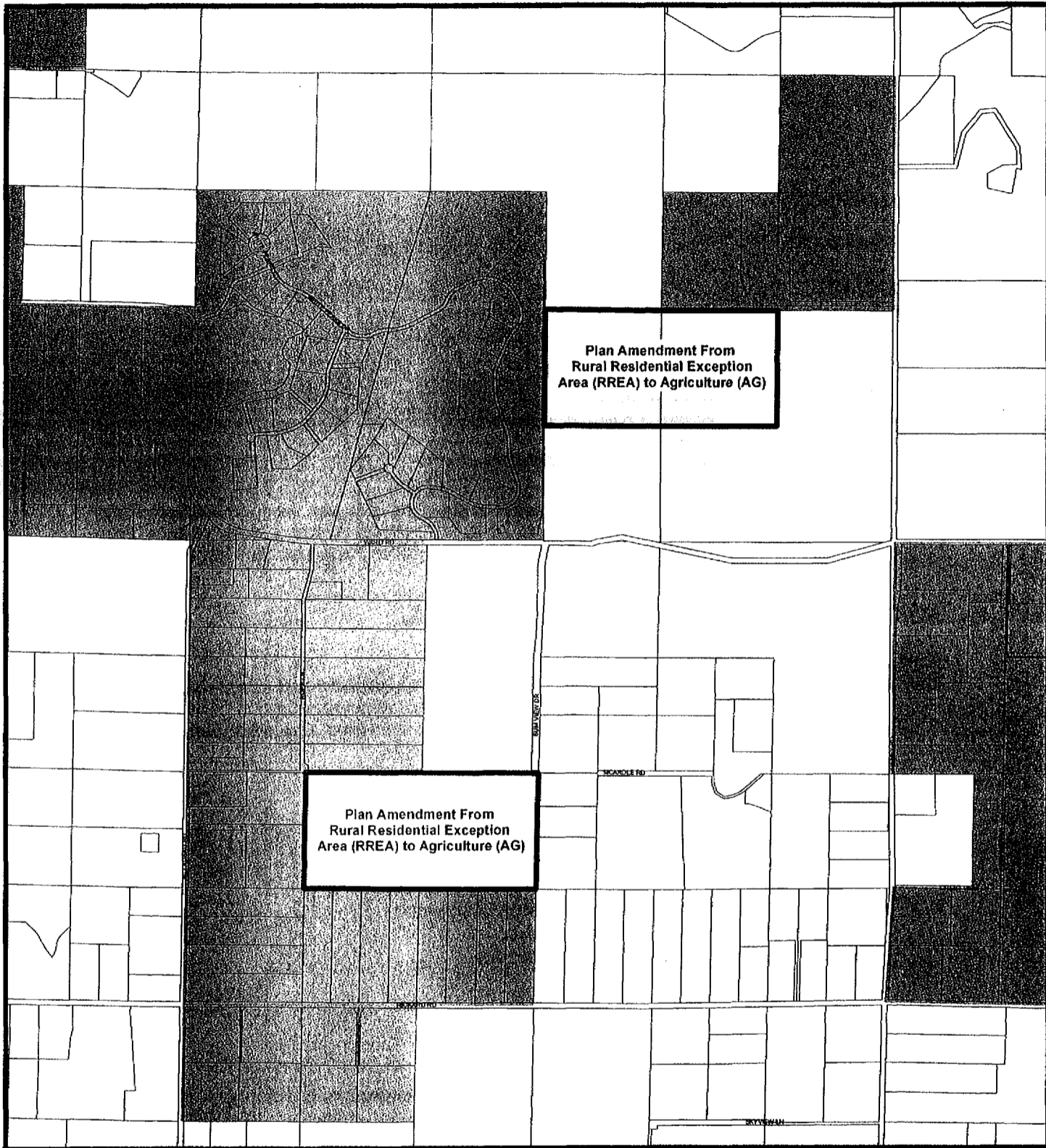
FOR: BEND METRO PARK & RECREATION DISTRICT

SHEET

1/1

SCALE: 1" = 1000' DRAWN BY: DRW. DATE: 08/22/06

Exhibit A
Page 2 of 2
Ordinance 2006-027



Comprehensive Plan Designations
 Agriculture (AG)
 Rural Residential Exception Area (RREA)
 Property Subject to Plan Amendment



DISCLAIMER
 The information on this map was derived from digital databases or Deschutes County's GIS. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or inaccuracy in the digital data or the underlying records. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.
 H:\Data\County\GIS\Planning\City\PA00509Map\Out\00509_027.mxd

COMPREHENSIVE PLAN MAP

File No. PA-05-09

Exhibit "B"
 to Ordinance 2006-027



July 25, 2006

BOARD OF COUNTY COMMISSIONERS
 OF DESCHUTES COUNTY, OREGON

Ben Luke
 Dennis B. Luke, Chair

Bev Clarno
 Bev Clarno, Vice-Chair

Michael M. Daly
 Michael M. Daly, Commissioner

Bonnie Baker
 ATTEST: Recording Secretary

Dated this 13 day of September, 2006
 Effective Date: December 12, 2006

DECISION OF THE DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: PA-05-9, ZC-05-4

HEARING DATE: Tuesday, March 28, 2006 at 6:30 P.M.

**APPLICANT/
OWNER** Bend Metro Park and Recreation District
200 NW Pacific Park Lane
Bend, Oregon 97701

ATTORNEY: Sharon Smith
Bryant, Lovlien & Jarvis P.C.
P.O. Box 1151
Bend, Oregon 97709-1151

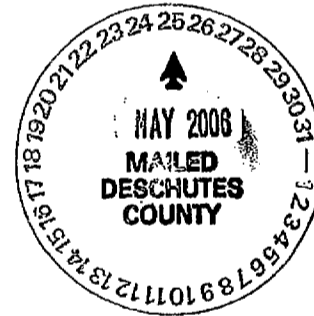
REQUEST: The applicant is requesting approval of a plan amendment from Rural Residential Exception Area to Agricultural and a zone change from Rural Residential (RR-10) to Exclusive Farm Use (EFU) for 160 acres located east of Bend.

STAFF CONTACT: Catharine White, Associate Planner

**RECORD CLOSING
DATE:** April 18, 2006--Deadline for written testimony and evidence
April 25, 2006--Deadline for rebuttal comments from applicant
May 2, 2006--Deadline for final written legal argument from applicant
in accordance with ORS 197.763(6)(e)

I. APPLICABLE STANDARDS AND CRITERIA:

- A. Title 23, the Deschutes County Comprehensive Plan.**
Chapters 23.24, 23.52, 23.60, 23.68, 23.80, 23.88, 23.96
- B. Title 18 of the Deschutes County Zoning Ordinance:**
Chapter 18.16, Exclusive Farm Use zones.
Chapter 18.60, RR-10, Rural Residential zone.
Chapter 18.136, Amendments



II. FINDINGS OF FACT:

- A. Location:** The property is identified on the County Assessor's tax map as a part of 18-13-18-100 (NE1/4, SW1/4 of Sec. 18 and NW1/4, SE1/4 of Section 18), 18-13-07-500, and 18-13-08-700.
- B. Lot of Record:** The subject tax lots are separate legal lots of record as determined by Lot of Record Verifications LR-90-98 and LR-90-99.

Exhibit C
Page 1 of 15
Ordinance 2006-27

- C. **Zoning and Plan Designation:** The property subject to the zone change is zoned Rural Residential (RR-10). The Comprehensive Plan designates the property Rural Residential Exception Area.
- D. **Site Description:** The property subject to the zone change consists of two rectangular-shaped 80-acre parcels. The parcels are part of a 760-acre tract acquired by the applicant in a series of land conveyances during the 1980s and 1990s. The property is unirrigated and topography varies—it is relatively level in some areas, gently undulating in others, or mildly slopes. Vegetation is juniper woodland, grasses, and brush. According to the applicant, the parcels, while vacant, provide open space and limited recreational uses in the form of hiking and equestrian trails. Sum View Drive and McArdle Road, both rural local roads, terminate in the northeast corner at the southwest 80 acre property. The northern 80 acres does not have frontage on a public road.
- E. **Soils:** The applicant submitted a soils map that shows the subject property consists of the following two soil mapping units as classified by the Natural Resources Conservation Service (NRCS):

#38B – Deskamp-Gosney Complex 0 to 8% slopes

This soil type is comprised of 50% Deskamp soils and similar inclusions and 35% Gosney soil and similar inclusions and 15% contrasting inclusions. Deskamp soils are somewhat excessively drained with rapid permeability. The available water capacity is about 3 inches. Gosney soils are somewhat excessively drained with rapid permeability and available water capacity of about one inch. Major uses for this soil type are livestock grazing and irrigated cropland. The land capability classes when irrigated is III for the Deskamp soils and IV for the Gosney soils and nonirrigated is VI for the Deskamp soils and VII for the Gosney soils. This soil type is not considered a high-value soil when irrigated.

58C. Gosney-Rock Outcrop-Deskamp complex, 0 to 15% slopes.

This soil type is comprised of 50% Gosney soil and similar inclusions, 25% rock outcrop, 20% Deskamp soil and similar inclusions, and 5% contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. Major use for this soil type is livestock grazing. The land capability classes when nonirrigated (there is no land capability for irrigated) ranges from VI (Deskamp) to VIII (rock outcrop). This soil type is not considered a high-value soil when irrigated.

According to the soils map provided by the applicant, the northern 80 acres consist predominantly of soil type 38B with finger-like portions consisting of 58C extending into the western and central portions of the property. The southwest 80 acres consists entirely of 38B.

- F. **Surrounding Land Use:** Surrounding land uses are a mixture of farm, rural residential, open space and recreational uses and include both Rural Residential (RR-10) and EFU zones. Specifically, regarding the northern 80-acre property: the adjacent lands to the northeast of the subject property are zoned RR-10, range from 15 to 30 acres in size,

and are either vacant or developed with a dwelling. East, south, and northwest, of the subject property is land owned by the applicant that is vacant and unirrigated. West of the subject property is Lane Knolls Estates, a rural residential subdivision with lots about 2 to 2.5 acres in size and zoned RR-10.

The surrounding land uses for the southwest 80-acres includes: To the northeast is vacant and unirrigated land owned by the applicant and zoned EFU. East are several smaller EFU zoned and privately-owned properties ranging from about 5 to 9 acres in size and each developed with a dwelling. South, west, and northwest are 10-acre RR-10 lots in rural residential development. According to water rights maps by Arnold Irrigation District, several of these RR-10 parcels are partially irrigated.

- G. Proposal:** The applicant is requesting approval of a plan amendment from Rural Residential Exception Area to Agriculture and a zone change from Rural Residential (RR-10) to Exclusive Farm Use (EFU) on the two 80-acre properties. The applicant has filed the plan amendment and zone change in conjunction with another plan amendment and zone change (file numbers PA-05-8, ZC-05-3) to change the zoning of 160-acres of property also owned by the applicant within the same tract from EFU to RR-10.

While no use of the property is proposed in conjunction with the zone change, according to the Burden of Proof, the proposal would allow the applicant to sell a portion of land for development and use the proceeds from that sale to purchase and develop additional park land for the benefit of the community, including the Pine Nursery property. If the proposal is granted, the applicant would retain the EFU properties.

Background: The Burden of Proof includes the following background statement regarding the proposed plan amendments and zone changes:

"Bend Metropolitan Parks and Recreation Department (the "Park District") is the owner of several connected properties in this area totaling 760 acres known as the Eastgate Property. The Eastgate Property is primarily zoned Exclusive Farm Use Tumalo/Redmond/Bend (EFU-TRB), but there are two portions within the Eastgate Property zoned RR-10 which total about 160 acres.

*"The Eastgate Property is located beyond the current boundaries of the Park District. It does provide open space and limited recreational uses in the form of hiking and equestrian trails. However, the lands are not currently in the Park District master plan for development. Initially, the Park District wanted to sell all or a portion of the Eastgate Property in order to fund park development goals. Many of the neighbors objected to the sale and raised concerns about the impact on their open space and recreational opportunities. The Park District met with the neighbors to develop a plan that would accommodate both the neighborhood goals of preservation of open space and the Park District's goals of funding other park development. As part of that settlement proposal, a Memorandum of Understanding (the "MOU") was developed * * *. That MOU contemplated the proposed actions herein.*

"Additionally, in order to facilitate the release and transfer of the existing reversionary interests held by the County, an Intergovernmental Agreement (the "IGA") was entered into between the County and the Park District a copy of which is also attached hereto. That IGA does not bind the County's actions with

respect to approval or disapproval of this land use application. It does provide for a mechanism for the release and exchange of the reversionary interest to the remaining block of EFU property if this application is successful."

- H. **Public/Private Agency Comments:** The Planning Division mailed notice to several agencies and received the following comments:

Deschutes County Address Coordinator: The address of record for this parcel is 61135 Ward Road. This is subject to change.

Arnold Irrigation District: In response to the above request, Arnold Irrigation District does have a canal which traverses the SE corner of Tax Lot 00100. There is a 25 foot easement on either side of the center line of the canal. This easement cannot be encroached upon at any time or in any way.

Bend Fire Department:

X Water Supply - 2004 Oregon IFC Section 508

An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. See the City of Bend Fire Marshal for approval of firefighting water supply.

X Premises Identification - 2004 Oregon IFC 505.1

Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background and visible at night. Dwellings and Foster Homes that are located off of street frontage shall post a visible approved reflective address sign at the entrance to their driveway. (Signs are available at local Fire Stations)

X Street or Road Signs - 2004 Oregon IFC 505.2

Streets and roads shall be identified with approved signs. Signs shall be of an approved size and weather resistive construction.

X Key Boxes - 2004 Oregon IFC Section 506

Key Box (Knox Box) for Fire Department access is required to be installed at any gates. An application for the Knox Box is available by calling the Fire Prevention office at (541) 322-6309.

X Additional Comments: NO FURTHER COMMENTS ON REQUEST FOR PLAN AMENDMENT AND ZONE CHANGE.

The following agencies had no comments or did not respond to the request for comments: Deschutes County Assessor, Deschutes County Road Department, Deschutes County Transportation Planner, Deschutes County Environmental Health, PG&E Gas Transmission, DLCD, Watermaster – District 11, Central Electric Coop., Pacific Power and Light, Qwest, Dept. of Fish and Wildlife, Oregon Department of Transportation.

J. **Public Notice and Comments:** The Planning Division mailed written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 750 feet of the subject property. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper on February 26, 2006, and the subject property was posted with a notice of proposed land use action sign on February 10, 2006 on Gosney Road. At the public hearing, the applicant's representatives and two other persons spoke in favor of the applications. Elaine Fulkerson submitted a letter in favor of the proposal. Vern Bishop noted that the proposed zone change would need to address the Arnold Irrigation District's lateral line, and that the proposal may change the traffic patterns in the area. Isa Taylor, writing on behalf of John True, commented that the proposal would shift residential development to the west side of Gosney Road, and that additional driveways along Gosney Road would result in additional traffic hazards. Ms. Taylor suggested that a condition of approval be imposed to limit potential new curb cuts. Elaine Green and Robin Brown submitted a letter in opposition, stating that they had purchased their property on Gosney Road in part because of its proximity to a future park area, and that additional residential development would undermine their property values.

K. **Review Period:** The applicant submitted the application on December 15, 2005. In a January 24, 2006 letter, the applicant extended the processing time by 7 days to allow the public hearing to be scheduled on March 28, 2006 instead of March 21, 2006. Because the application is for a plan amendment and related zone change, the 150-day period for issuance of a final decision under ORS 215.427 does not apply to this application.

The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit dated February 10, 2006 that indicates that the applicant posted notice of the land use action on February 10, 2006.

At the request of the applicant, the Hearings Officer held the record open for written comments until April 18, 2006. The Hearings Officer has considered all testimony and evidence presented prior to the close of the record on May 2, 2006.

III. CONCLUSIONS OF LAW:

PLAN AMENDMENT

A. Oregon Administrative Rules

1. OAR 660, Division 12, Transportation Planning Rule

a. OAR 660-012-060, Plan and Land Use Regulation Amendments.¹

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

**(b) Change standards implementing a functional classification system;
or**

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

¹ The version of the Transportation Planning Rule cited in the Staff Report has been superseded. The current version is set out above.

(2) Amendments to functional plan, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:

(a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;

(b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

FINDING: This rule applies to the applicant's proposal because it requests an amendment to an acknowledged plan.

If approved, according to the Burden of Proof, the proposed EFU land would be retained by the applicant and "could be used for open space and limited recreational uses."

The two parcels proposed for EFU zoning are located in the interior of the District's Eastgate holdings. The southern 80 acres is accessed via McArde and Sum View Drive, which are classified as local access roads. The nearest collectors are Ward Road to the north and Gosney Road to the east. The northern 80 acres does not have frontage on a public road; the nearest collectors are Ward Road to the south and Gosney Road to the east. If the parcels are zoned EFU, the District plans to use the parcels as part of the natural area, in accordance with uses that are allowed in the zone. The applicant does not anticipate developing uses that will generate levels of traffic that are inconsistent with the functional classification of an existing or planned transportation facility, reduce the performance of a transportation facility or worsen the performance of a transportation facility. According to the applicant, trip generation in the area will remain relatively stable, as the areas proposed for the land swap would use the same transportation facilities as those affected by the proposed EFU designation.

The applicant also submitted testimony from Steve Jorgensen, Deschutes County Senior Transportation Planner, that concludes that the proposed zone change would not "cause the existing roadway to be over generalized capacity for a collector-level road." (Supplemental Burden of Proof, Exhibit 12).

The Hearings Officer concludes that the proposed zoning is less intensive than the current zoning and that the evidence shows that the proposed zoning will not "significantly affect" a transportation facility" within the meaning of OAR 660-012-0060(1). If the parcels are developed as a park, those uses will be subject to conditional use review in accordance with ORS 215.283(2)(d) and DCC 18.16.030. Transportation impacts of the proposed park uses can be assessed in those proceedings.

B. Conformance with the Deschutes County Comprehensive Plan

A Plan Amendment to the Comprehensive Plan is required for the proposed zone change of the RR-10 property to change the plan from Rural Residential Exception Area (RREA) to Agriculture. The following Sections and Goals and Policies within those sections apply:

File: PA-05-9, ZC-05-4 (Bend Metro Park and Recreation District)
Page 7 of 15

Exhibit C
Page 7 of 15
Ordinance 2006-27

1. Chapter 23.24, Rural Development

a. Section 23.24.020, Goals

A. To preserve and enhance the open spaces, rural character, scenic values and natural resources of the County.

B. To guide the location and design of rural development so as to minimize the public costs of facilities and services, to avoid unnecessary expansion of service boundaries and to preserve and enhance the safety and viability of rural land uses.

Findings: The applicant proposes a Plan Map Amendment from RREA to Agriculture for the two 80-acre properties. The application is submitted in conjunction with another plan amendment and zone change (PA-05-8 and ZC-05-3) to change 160-acres of the same tract owned by the applicant from EFU to RR-10. According to the applicant:

"Natural resources, open spaces and scenic values are all protected by this zone trade, resulting in preservation of the rural character of the land. Overall, the land would change very little, and the changes that are made help to protect the rural character of the land. The consolidation of the EFU lands ensures that development would not occur in the middle of the Eastgate Property, which would have adverse impacts on rural character of the land. The development potential of the zone trade is the same, 16 lots. It would just be in a more suitable location."

Staff and the Hearings Officer agree with this statement. In addition, since the proposed EFU land will be retained by the applicant for potential open space and limited recreational uses in conjunction with current zoning restrictions of the EFU zone, the rural character, scenic values, and natural resources in the area will be preserved and enhanced.

2. Chapter 23.52, Economy

a. Section 23.52.030, Policies

6. The County shall protect agricultural land to assure continued agricultural production and the benefits to tourism.

Findings: Approval of the proposed plan map amendment affecting two 80-acre properties of RREA to Agriculture land is being sought in conjunction with another plan amendment affecting 160 acres of the land owned by the applicant on the same tract from Agriculture to RREA. The Hearings Officer and staff agree with the applicant's statement below that the proposal will protect agricultural land because no net loss of land zoned EFU will occur:

"This goal would be furthered because the proposal for rezoning/plan amendment/goal exception would preserve the same amount of EFU land as currently exists. Currently, the proposed zone trade areas are very similar with regard to soil quality and agricultural potential, so there would be no net loss of this type of agricultural land. Additionally, granting the proposal would keep all of the potential development land together, as opposed to the way the RR-10 land currently exists, which is important because the proposal would mean that there would not need to be roads or utilities on the agricultural land as a development in the currently zoned RR-10 land would require. The absence of roads and utilities on the agricultural land is an important

factor to consider when analyzing the requirements for proper maintenance of agricultural land.”

The Hearings Officer concludes that the proposal is consistent with DCC 23.52.030(6).

3. Chapter 23.68, Public Facilities

a. Section 23.68.020, Policies

- 1. Public facilities and services shall be provided at levels and in areas appropriate for such uses based upon the carrying capacity of the land, air and water, as well as the important distinction that must be made between urban and rural services. In this way public services may guide development while remaining in concert with the public's needs.**
- 3. Future development shall depend on the availability of adequate local services in close proximity to the proposed site. Higher densities may permit the construction of more adequate services than might otherwise be true. Cluster and planned development shall be encouraged.**
- 9. New development shall not be located so as to overload existing or planned facilities, and developers or purchasers should be made aware of potentially inadequate power facilities in rural areas.**

FINDINGS: Public facilities and services are currently provided in the nearby area as evidenced by existing rural residential development in the nearby and adjacent areas. Lane Knolls Estates subdivision to the west and other nearby rural residential development, for example, are presently served by power, telephone, and septic, fire and police protection. The applicant provided “willing to serve” letters from the Deschutes County Rural Fire Protection District #2, Central Electric Co-op, and Avion Water Company. Since the potential use of the proposed EFU properties would be open space and limited recreational uses requiring minimal utility and public services, the likely public facilities that would be needed would be roads, fire protection, electrical service and domestic water. The Hearings Officer concludes that the evidence shows that existing public facilities would be available, adequate and minimally affected by the proposed zone change.

5. Chapter 23.88, Agricultural Lands

Section 23.88.020. Goal.

To preserve and maintain agricultural land.

Section 23.88.030, Zoning Policies

- 1. All lands meeting the definition of agricultural lands shall be zoned Exclusive Farm Use, unless an exception to Statewide Goal 3 is obtained so that the zoning may be Multiple Use Agriculture or Rural Residential.**

FINDINGS: The issue regarding this plan amendment criterion is whether the proposed two 80-acre EFU properties qualify as agricultural land as that term is defined in the Oregon's

Statewide Planning Goals & Guidelines, Goal 3: Agricultural Lands. Goal 3 defines Agricultural Lands as follows:

Agricultural Land – * * * in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 and 4.

The subject parcels are predominately comprised of a mix of Class VI, VII and VIII soils, with the greatest percentage being Class VI soils. Therefore, the Hearings Officer concludes the property would be designated as Agricultural Lands subject to Goal 3, unless property is located within a UGB or is subject to an exception to Goal 3.

The subject parcels are not located within a UGB. The subject parcels are part of a larger area that is subject to an exception to Goal 3 adopted in 1981. According to the evidence, it appears that at the time the Comprehensive Plan was acknowledged, certain areas around Bend were considered "committed" to rural residential development, even though little or no residential development had yet occurred on them. Many of those areas were acknowledged by LCDC as exception areas as part of the global acknowledgement process. In this case, there is little evidence to show exactly why the county considered the subject parcels were committed to residential development. Development that was anticipated has not occurred on the subject parcels, and residential development on those two parcels is constrained by a lack of access to nearby collector streets. In addition, the two parcels are part of the District's interior Eastgate holdings. As a result, it now appears that the two parcels are no longer "committed" to rural residential development.

Staff asserts that the parcels cannot be rezoned for agricultural uses, apparently because they believe that once a property is subject to an exception, the exception itself irrevocably commits the property to nonresource uses. The Hearings Officer respectfully disagrees. The three types of exceptions ("reasons," "built" and "irrevocably committed") were adopted to recognize that in some cases, land that might otherwise be subject to Goals 3 and 4 are either developed or planned for non-resource uses. In most cases, the justification was based on existing development patterns, and the likelihood that those development patterns would continue. In this case, the applicant has demonstrated that for a variety of reasons, inclusion of these two parcels in an area of rural residential development is no longer appropriate. Accordingly, the Hearings Officer concludes it is permissible to, in essence, lift the exception and allow the parcels to revert to the Agricultural designation.

2. **Public lands meeting the criteria for EFU zoning shall be so zoned unless some other resource (i.e., forest) or public use exists on the land.**

FINDINGS: Since the property is owned by the Bend Metro Park and Recreation District, which according to the IGA is a special district of the State of Oregon responsible for providing park and recreational facilities pursuant to ORS 266.110, the land owned by the Park District is public. This is an additional reason to support the proposed zoning designation.

CONCLUSION: For the above reasons, the Hearings Officer concludes that the applicant has shown that the proposed comprehensive plan map designation is appropriate.

ZONE CHANGE

TITLE 18, DESCHUTES COUNTY ZONING ORDINANCE

A. Chapter 18.136, Amendments

Section 18.136.020, Rezoning standards.

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

- A. That the change conforms with the Comprehensive Plan, and the change is consistent with the Plan's introductory statement and goals.**

FINDING: As discussed in the findings above, the subject properties currently are designated RREA on the County's Comprehensive Plan Map.

In a prior Hearings Officer's decision involving a plan amendment and goal exception to Goal 3 ("committed" exception) and zone change from Surface Mining to Multiple Use Agricultural (MUA-10, file numbers PA-04-4, ZC-04-2), the Hearings Officer made the following finding relative to the subject criterion:

[T]he plans goals and policies do not constitute mandatory approval criteria for the proposed zone change, but rather are implemented through the zoning ordinance. Therefore, if the proposed zone change is consistent with the applicable provisions of the zoning ordinance it also will be consistent with the plan.

The proposed zone change criteria are addressed below.

- B. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.**

FINDING: The applicant is proposing a zone change from Rural Residential (RR-10) to Exclusive Farm Use (EFU-TRB). The purpose of the EFU zone is stated below:

18.16.010. Purpose.

File: PA-05-9, ZC-05-4 (Bend Metro Park and Recreation District)
Page 11 of 15

Exhibit C
Page 11 of 15
Ordinance 2006-27

- A. *The purpose of the Exclusive Farm Use zones is to preserve and maintain agricultural lands and to serve as a sanctuary for farm uses.*
- B. *The purposes of this zone are served by the land use restrictions set forth in the Comprehensive Plan and in DCC 18.16 and by the restrictions on private civil actions and enforcement actions set forth in ORS 30.930 through 30.947.*

In response to this criterion, the applicant's Burden of Proof states:

The proposed zone trade will maintain the previously established inventory of RR-10 lands on the Eastgate Property by rezoning the land currently RR-10 to EFU. The subject property is ideally located in the proposed area because it consolidates all of the EFU land into one contiguous region, rather than having it divided into three separate areas as it currently exists. This will help to preserve land resources and will create more physical isolation, which will help to protect the rural character of the area.

Based on the poor soils of the property, lack of irrigation, undisturbed juniper woodland, terrain, staff does not believe, and the applicant has provided no other evidence to the contrary, the properties would serve as a "sanctuary" for farm uses as that term is defined in DCC 18.04.²

The Hearings Officer concludes that the proposed zone change is consistent with DCC 18.04. Although the two parcels may not be in agricultural use, their current informal uses and their eventual development as a regional park will preserve other agricultural lands that might be otherwise acquired and developed to serve the recreational needs of the area. In addition, the net result of the District's application is to maintain the status quo in the area rather than to add 160 acres of new rural residential development. Finally, as the applicant notes elsewhere in its burden of proof, the proposed zone change will result in using less resource zoned land for roads to access the inland parcels, again preserving agricultural land for agricultural uses.

- C. **That changing the zoning will presently serve the public health, safety and welfare considering the following factors:**

² Where farm uses, per 18.04 DCC, are defined as:

"Farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described above. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b).

1. The availability and efficiency of providing necessary public services and facilities.

FINDING: The availability of providing necessary public services and facilities was previously addressed under the plan amendment criteria. The applicant provided "willing to serve" letters from the Deschutes County Rural Fire Protection District #2, Central Electric Co-op, and Avion Water Company. Since the potential use of the proposed EFU properties would be open space and limited recreational uses requiring minimal utility and public services, the likely public facilities that would be needed would be roads, fire protection, electrical service and domestic water. DCC 18.136.020(C)(1) is satisfied.

2. The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

FINDING: Surrounding land uses include a mixture of uses, including rural residential, farm, and open space and recreation. Rezoning the property to EFU will not adversely impact surrounding property because open space and recreational uses are consistent with the surrounding area and are consistent with the Comprehensive Plan policies to preserve and enhance open space, rural character, scenic values, and natural resources of the County.

D. That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

FINDING: The applicant argues the zone change from RR-10 to EFU is justified by a change in circumstances since the property was last zoned as stated below:

"There has been a change in circumstances justifying the proposed zone [change]. The District acquired a large portion of the Eastgate Property from the County. When the property was owned by the County it was likely not an issue as to how the property was designated or zoned. Since acquiring the property from the County, the Park District has updated its comprehensive park plan and has acquired the Pine Nursery Property from the federal government. In the current park plan, the Eastgate Property is not scheduled for park development. This is so, in part, because the properties are located beyond the Park District's boundaries. Also, there is no identified need for a park development in this rural area. The best utilization of the Eastgate Property is through maximization of the value so as to fund other park acquisition and development, including the Pine Nursery Property. In addition, under the proposed plan, 600 acres of the property will be retained for open space and recreational uses by the surrounding area neighbors as well as Park District residents.

"Moreover, since the property was originally zoned, there has been substantial residential development in the surrounding area. Much of that development has taken access off of Ward Road, which has now become developed with public services, including water and power, as well as road infrastructure. This development pattern has not occurred in the Current RR-10 Property. Therefore, re-locating the RR-10 zoned property as proposed is more consistent with the Comprehensive Plan policies for rural residential development that it was when originally zoned."

The phrase "a change in circumstances since the property was last zoned," can be broadly interpreted. The above criterion does not define the parameters as to what constitutes "a change in circumstances." The property has been zoned RR-10 since the County adopted PL-15 in 1979. The change in circumstances identified in the applicant's Burden of Proof includes

the Park District's update of their comprehensive park plan to include the Pine Nursery Property and exclude the proposed RR-10 property. While the Burden of Proof does not state when the applicant acquired the property, the acquisition of the Pine Nursery Property and its incorporation of the proposed park development into the Park District's comprehensive park plan appear to have occurred after the subject property was acquired by the Park District. The proposal to rezone the property from RR-10 to EFU would allow the applicant to sell a portion of the Eastgate Property and generate funds for the Pine Nursery property, which once improved for park purposes, would serve the public health, safety and welfare by providing a community asset in the form of a public park. Based on this information, the Hearings Officer concludes the applicant has demonstrated the proposed zone change is justified by a change of circumstance.

TITLE 22, DEVELOPMENT PROCEDURES ORDINANCE

Section 22.28.030. Decision on plan amendments and zone changes.

- A. *Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.***
- B. *In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.***
- C. *Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.***

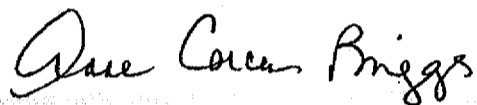
FINDING: The County's Procedure's Ordinance, Chapter 22, establishes the procedures for decisions on plan amendments and zone changes. Regarding the subject plan amendment and zone change from RR-10 to EFU, the Hearings Officer has the authority to make the decision unless appealed or called-up by the Board. The Board, however, must adopt the plan amendment and zone change through ordinances.

IV. DECISION:

The Hearings Officer hereby APPROVES the applicant's proposed plan map amendment from RREA to EFU and zone change from RR-10 to EFU-TRB for the parcels known as the southern portion of 18-13-08 Tax lot 100 (the southern 80 acre parcel) and 18-13-07 Tax lots 500 and 700 (the northern 80 acre parcel) as depicted on the materials supplied in the applicant's burden of proof.



Dated this 23rd day of May, 2006.

Mailed this 25th day of May, 2006.



Anne Corcoran Briggs
Hearings Officer

THIS DECISION IS FINAL UNLESS APPEALED TO THE BOARD OF COUNTY COMMISSIONERS WITHIN 12 DAYS OF MAILING.

REVIEWED  LEGAL COUNSEL
REVIEWED  CODE REVIEW COMMITTEE

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, the Deschutes	*	
County Zoning Map, to Change the Zone	*	ORDINANCE NO. 2006-028
Designation on Certain Property from Rural	*	
Residential to Exclusive Farm Use.	*	

WHEREAS, the Bend Metro Park and Recreation District has proposed a zone change to Title 18, Deschutes County Zoning Map, to rezone certain property from Rural Residential (RR-10) Zone to Exclusive Farm Use (EFU); and

WHEREAS, notice was given and hearing conducted on June 26, 2006, before the Board of County Commissioners ("Board") in accordance with applicable law; and

WHEREAS, the Board after reviewing all the evidence presented at the public hearing, agrees with the findings of the Hearings Officer, and

WHEREAS, on this same date, the Board adopted Ordinance 2006-027 amending Title 23 of the Deschutes County Code by changing the plan designation of the property from Rural Residential Exception Area to Agricultural; and

WHEREAS, the Deschutes County Board of Commissioners, after review conducted in accordance with applicable law, approved the proposed change to the County Zoning Map; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Title 18, Zoning Map, is hereby amended to change the zone designation of the subject property, described by the legal description attached as Exhibit "A" to Ordinance 2006-027, and depicted on Exhibit "A," and by this reference incorporated herein, from Rural Residential (RR-10) Zone to Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) zone.

///

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached to Ordinance 2006-027 as Exhibit "C," and by this reference incorporated herein.

Dated this 13th of Sept., 2006

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, CHAIR


BEV CLARNO, VICE CHAIR

ATTEST:


Recording Secretary


MICHAEL M. DALY, COMMISSIONER

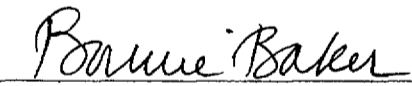
Date of 1st Reading: 28th day of August, 2006.

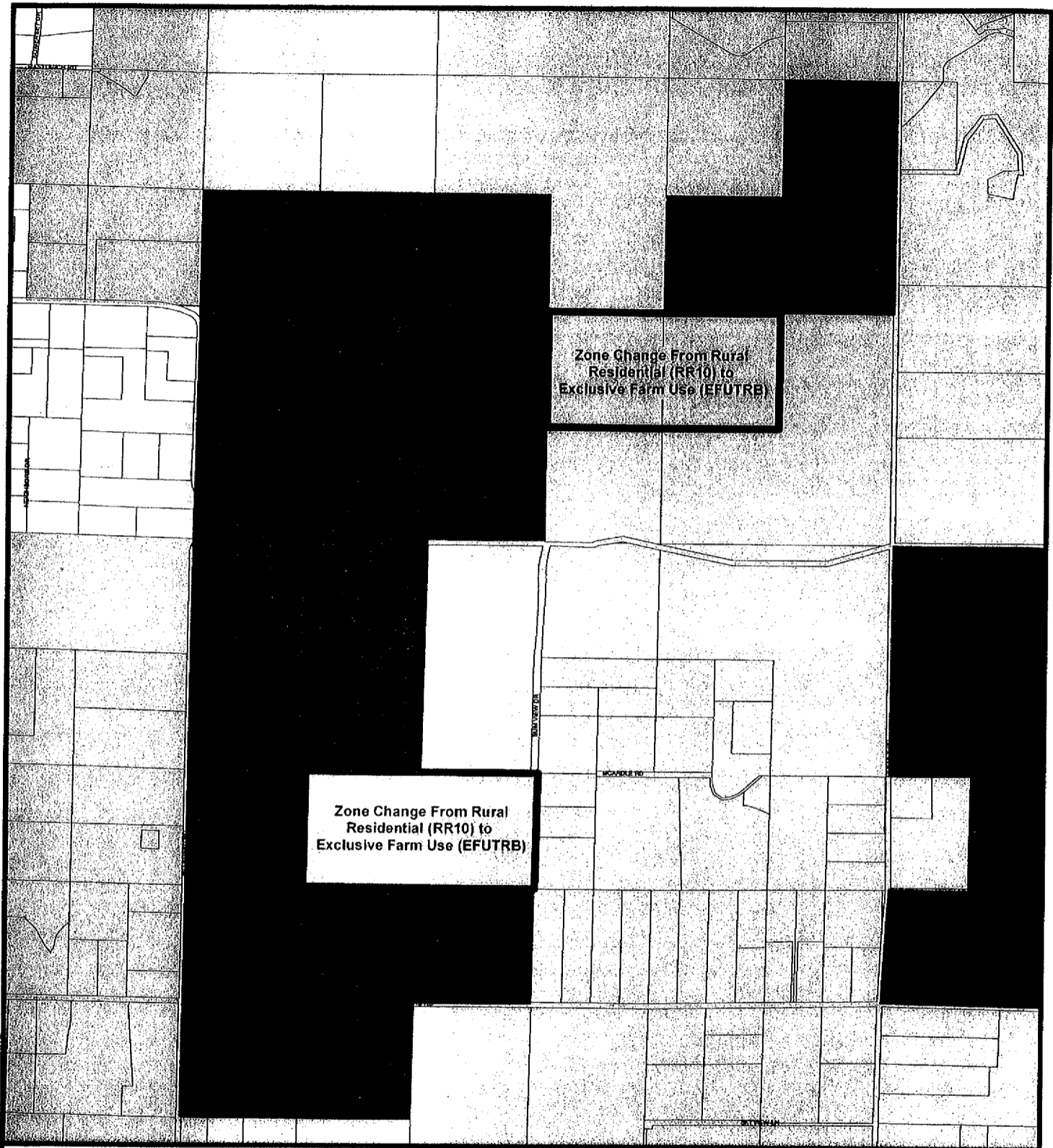
Date of 2nd Reading: 13th day of Sept., 2006.

Record of Adoption Vote				
Commissioner	Yes	No	Abstained	Excused
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bev Clarno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 12th day of Dec., 2006.

ATTEST:


Recording Secretary



Zoning Designations

	EFU - Tumalo/Redmond/Band Subzone (EFUTRB)
	Multiple Use Agricultural (MUA10)
	Rural Residential (RR10)
	Property Subject to Zone Change



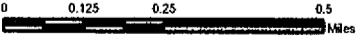
DISCLAIMER
 The information on this map was derived from digital databases on Deschutes County's GIS. Deschutes County is not responsible for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, as given or implied, including the suitability of information for any particular purpose, except as stated in the public notices. However, notification of any errors will be appreciated.

NY\Custom\County\GIS\Planning\July 13 0056\Map\Doc\2006_028.mxd

ZONING MAP

File No. ZC-05-04

Exhibit "A"
 to Ordinance 2006-028



July 25, 2006

BOARD OF COUNTY COMMISSIONERS
 OF DESCHUTES COUNTY, OREGON

Dennis R. Luke
 Dennis R. Luke, Chair

Bev Climo
 Bev Climo, Vice-Chair

Michael M. Daly
 Michael M. Daly, Commissioner

Bonnie Baker
 ATTEST: Recording Secretary

Dated this 13 day of September, 2006
 Effective Date: December 12, 2006